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NATHANIEL J. OLESON (CA Bar No. 276695)  
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Attorneys for Plaintiff,  
Gary A. Stein

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

SERGEANT GARY A. STEIN, United States	)	Case No.: <b>'12CV0816 H BGS</b>
Marine Corps, Camp Pendleton, California 92055;	)	
Plaintiff,	)	<b>DECLARATION OF SERGEANT GARY A.</b>
	)	<b>STEIN IN SUPPORT OF PLAINTIFF'S</b>
	)	<b>COMPLAINT FOR DECLARATORY AND</b>
	)	<b>INJUNCTIVE RELIEF</b>
v.	)	
COLONEL C.S. DOWLING, Commander,	)	
Weapons and Field Training Battalion, Camp	)	
Pendleton, California 92055; RAY MABUS,	)	
SECRETARY OF THE UNITED STATES	)	
NAVY, The Pentagon, Washington, D.C.;	)	
UNITED STATES DEPARTMENT OF	)	
DEFENSE, The Pentagon, Washington, D.C.;	)	
UNITED STATES OF AMERICA; and,	)	
BRIGADIER GENERAL DANIEL YOO.	)	
Defendants.)	)	

I, Gary A. Stein, hereby declare as follows:

1           1.       That I am the Plaintiff in this action; that this declaration is submitted in support of  
2 Plaintiff's Complaint for Declaratory and Injunctive Relief; that the following facts are within my  
3 personal knowledge, and that, if called as a witness herein, I can, and will, competently testify as follows:

4           2.       That I am a member of the Armed Forces of the United States, being an enlisted soldier  
5 in good standing with the United States Marine Corps, having served for almost nine years in the Marine  
6 Corps, since September 11, 2002, and having attained the rank of Sergeant on May 1, 2008.

7           3.       That, during the period of 2010-2012, I, through activities unconnected with my duties as  
8 a U. S. Marine, on my own personal time, spoke, wrote, and otherwise communicated with other private  
9 citizens in connection with a variety of matters, including public policy issues; In so doing, I expressed  
10 my personal opinions on political candidates and issues, but not as a representative of the U. S. Armed  
11 Forces; and I, along with three other individuals, maintained an account on the computer social  
12 networking site known as "Facebook" to do so.

13          4.       That, in April, 2010, I was approached by a representative of Chris Matthews, host of the  
14 HARDBALL television program, about appearing on that show; I obtained permission from my  
15 immediate superior, my Gunnery Sergeant, and I made travel plans to so appear; On my way to appear on  
16 the television program, I received a telephone call from Headquarters, Marine Corps, in Quantico,  
17 Virginia, and I was ordered to return to my base.

18          5.       That, subsequently, I was approached by my Chief Warrant Officer concerning my  
19 Facebook page, because of the possibility, expressed by the Warrant Officer, that it could be construed as  
20 emanating from military sources, rather than from private sources.

21          6.       That I thereupon took down the Facebook page, while I reviewed the matter.

22          7.       That I was urged, at that time, by a Judge Advocate of the First Marine Expeditionary  
23 Force, to add a disclaimer to my Facebook page, that all statements therein were personal views, not made  
24 in any official capacity, and not representing the views of the U. S. Marine Corps, if I was going to leave  
25 the page up.

1           8.       That I thereafter put my Facebook page back up on the Internet, adding thereon an  
2 appropriate disclaimer, consistent with what I had been advised concerning the permissible maintenance  
3 of a Facebook page.

4           9.       That I was not advised, at that time, nor at any subsequent time, to take down my  
5 Facebook page, to remove it from the Internet, or to make any further modifications thereto.

6           10.      That, during the 17-month period, from November, 2010, through March 1, 2012, no  
7 attempt was made by any of my commanding officers, or any other Marine Corps officer, to restrict or  
8 correct my face book activities, including my comments about candidates for election in the 2012  
9 Presidential Election, nor was there any effort by any defendant, or person serving under any defendant,  
10 to modify or change my Facebook content, or to counsel or discuss said content with me in relation to my  
11 duties as a member of the U.S. Marine Corps, or otherwise to advise me, that my Facebook activities in  
12 any way prejudiced the good order and discipline of the U.S. Marine Corps.

13          12.      That, on March 21, 2012, I was notified by my Commanding Officer of the institution of  
14 Administrative Separation Proceedings, whereby he was recommending my discharge from the U.S.  
15 Marine Corps, because of alleged misconduct, as set forth in a Notification of Administrative Separation  
16 Proceedings dated 21 March 2012 ["Notification"]. The basis for the recommendation was not specified,  
17 other than as follows:

18           The bases for this recommendation are as follows: (1) that on or about 1 March 2012, you  
19 allegedly made statements regarding the President of the United States that are prejudicial to good  
20 order and discipline, as well as service discrediting in violation of Article 134, UCMJ; (2) from  
21 on or about November 2010 to the present you allegedly created, administered, and provided  
22 content to a Facebook page, as well as other online media sources, in violation of DoD Directive  
23 1344.10. [*Id.*, p.1.]

24          13.      That according to the Notification, it was recommended that I receive a separation from  
25 service characterization of "Other Than Honorable Conditions" ("OTH").

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14.      That the Notification required me to respond within two working days.

1           15.     That I responded timely to the Notification, and a hearing was immediately scheduled for  
2 March 30, 2012 — just nine days after the Notification.

3           16.     That, on March 25, 2012, the hearing was delayed one day, until Saturday, March 31,  
4 2012.

5           17.     That, on March 25, 2012, I requested an additional one week in order to allow more  
6 adequate preparation for the hearing, but that request was summarily denied on March 26, 2012.

7           18.     That, on March 27, 2012, I retained as civilian counsel J. Mark Brewer, pursuant to  
8 MARCORSEPMAN Section 6304.3(c).

9           19.     That, on March 28, 2012, the hearing date was adjourned to April 5, 2012 which is  
10 Maundy Thursday.

11          20.     That, on March 30, 2012, I, through counsel, reiterated my request to extend the hearing  
12 date until at least a date following a substantive response to the Request for a Legal Ethics Opinion that  
13 my legal counsel, on my behalf, had submitted on or about March 30, 2012.

14          21.     That it is my wish to remain a member of the United States Marine Corps.

15                 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
16 true and correct.

17                 Executed this 3rd day of April, 2012, at Camp Pendleton, California.

18  
19                                 sig via fax  
20                                 Sgt. Gary A. Stein  
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 3rd day of April, 2012, at Camp Pendleton, California.

 20120403  
Sgt. Gary A. Stein